85-353

Supreme Court, U.S.
FILED
OCT 2 1985
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

MICHIGAN DIVERSIFIED BUSINESS PRODUCTS, INC., and MICHIGAN DIVERSIFIED BUSINESS CORP., d/b/a DANISH ADULT NEWS, d/b/a MEL-O-DEE RECORDS AND TAPES,
Appellants

vs.

CITY OF WARREN, GEORGE O. BRUGGEMAN and PATRICK J. SANKUER,
Appellees.

BEST AVAILABLE COPY

ON APPEAL FROM THE MICHIGAN COURT OF APPEALS

MOTION TO DISMISS

David L. Dalenberg
Senior Assistant City Attorney
City of Warren, Michigan
29500 Van Dyke Avenue
Warren, Michigan 48093
(313) 574-4671
Attorney for Appellees

October 2, 1985

THE AMERICAN PRINTING COMPANY
1200 WEST FORT STREET, DETROIT, MICHIGAN 48226 — (313) 963-9310

28pp

INDEX

	Page
CITATIONS	ii
MOTION TO DISMISS	1
STATEMENT	1
ARGUMENT	4
CONCLUSION	6

CITATIONS

Cases: **Page**

Tileston v. *Ullman*, 318 U.S. 44, 87 L Ed 603, 63 S.Ct. 493 (1943) 5

United States v. *Raines*, 362 U.S. at 22, 4 L Ed 2d 524, 80 S.Ct. 519 5

Warth v. *Seldin*, 442 U.S. 490, 499, 45 L Ed 343, 95 S.Ct. 2197 (1975) 5

Ordinances:

City of Warren Zoning Ordinances:

Section 14.02(C)(2) 2, 3, 4

Section 20.07 3

Section 21.06(c) 3

Section 22.14 3

State Laws:

Michigan Compiled Laws, Section 125.581, et seq. .. 1

Section 125.584(c) 3

Section 125.584(d) 3, 4

Section 125.587 2

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1985

MICHIGAN DIVERSIFIED BUSINESS PRODUCTS, INC., and MICHIGAN DIVERSIFIED BUSINESS CORP., d/b/a DANISH ADULT NEWS, d/b/a MEL-O-DEE RECORDS AND TAPES,
Appellants

vs.

CITY OF WARREN, GEORGE O. BRUGGEMAN and PATRICK J. SANKUER,
Appellees.

ON APPEAL FROM THE MICHIGAN
COURT OF APPEALS

MOTION TO DISMISS

Appellees, pursuant to Rule 16.1(b) of the Rules of the Supreme Court of the United States, move the Court to dismiss the appeal herein for the reasons and on the grounds hereinafter set forth.

STATEMENT

This is an appeal from a judgment of the Court of Appeals for the State of Michigan upholding an injunction issued by the Macomb County Circuit Court enjoining Appellants from operation of any of the proposed adult uses until it has complied with the City of Warren ordinances. The facts underlying the appeal are as follows:

The City of Warren adopted its Zoning Ordinance on July 21, 1960, pursuant to the Michigan Zoning Enabling Statute, MCL 125.581, et seq. Subsequently, the City adopted amendments, including the requirement of special use approval for a number of commercial uses. The uses

relevant to this litigation include: massage establishments, whirlpool baths, escort services and nude body painting or modeling studios. In 1978, the City added adult bookstores, adult mini-motion picture theaters, and adult motion picture theaters as uses requiring approval but imposed an additional requirement not applicable to the other uses. The additional requirement provides that the site must be set back from residential properties, other adult businesses, churches and schools, and must be located on a major thoroughfare. (App. 10a) A site not meeting these setback criteria will not be required to apply for special use approval, Warren Zoning Ordin. 14.02C(2).

The City of Warren commenced an action in the County Circuit Court to enjoin a violation of its Zoning Ordinance pursuant to the Michigan statute authorizing abatement of zoning ordinance violations as a nuisance per se (MCL 125.587). (App. 9a) The City claimed that the Appellants had obtained a Certificate of Occupancy for an "office," "portrait studio," "retail sales of tapes and records" at the property site, but conducted certain adult uses different from the Certificate of Occupancy without first submitting a site plan application or special use application pursuant to Section 14.02 of the City ordinance. The City claimed that the Certificates of Occupancy were fraudulently obtained and, therefore, Appellants occupied the premises without the required Certificate of Occupancy for adult uses, making the use a nuisance per se under Michigan statute. Contrary to Appellants' statement of the case in their Jurisdictional Statement, no countercomplaint was filed that alleged that Section 14.02's special use requirement is unconstitutional.

The Circuit Court determined that Appellants failed to comply with the twofold requirements of Warren Zoning Ordin. 14.02C(2), which include: (1) submission of site plan for spatial measurements and site development approval, and (2) submission of special use approval application for approval of the proposed uses.

Diversified's challenge to the validity of the special use approval procedure was raised by Diversified in its appeal to the Michigan Court of Appeals. No attack was made on the spatial requirements of Section 14.02C(2) as they would apply to Diversified's location.

Diversified is located in a district classified C-2 by Warren, within 100 feet of residentially zoned (R-1-C) property. Under Section 14.02 of the Warren Zoning Ordinance, adult businesses, as defined therein, are permitted to locate in C-2 districts subject to the distance requirements measured from the site plan submitted by petitioner. Diversified stipulated at trial that it has not submitted the required site plan application or the application for special use approval, and further stipulated that it intended to conduct "adult businesses" as defined in the ordinance.

As written and as implemented, the Warren Zoning Ordinance requires an applicant for an adult use to submit a site plan application as a prerequisite to submitting an application for special use approval in order to determine whether the spatial limitations provided therein would apply to the applicant's property. This procedure is a prerequisite because if said property did not comply with the spatial restrictions mandated by 14.02C(2), then it would be futile to submit application for special use approval. (App. 10a)

If a special use approval was required before April 12, 1983, application must be presented to the City Planning Commission and the Board of Appeals for approval under Section 14.02. Certain criteria and standards for review of an application were provided in Sections 14.02, 21.06 and 20.07 of the Warren Zoning Ordinance. Additional standards are provided in MCL 125.584(c). (App. 7a) On April 12, 1983, the Warren Zoning Ordinance was amended to provide for approval by the legislative body, after recommendation of the Planning Commission. Furthermore, the amendment provides more detailed standards for the approval of a special use in new Section 22.14. This amendment was adopted pursuant to the requirements of changes in the Enabling

Act, MCL 125.584(c), 125.584(d). (App. 7a and 8a) The standards set forth in Sections 14.02, 20.07, 21.06(c), and 22.14 provide sufficient standards for consideration of an application for special use approval.

On November 17, 1981, Appellants commenced an action in the U.S. District Court seeking declaratory and injunctive relief against Appellees herein, *Michigan Diversified Business Corp. v City of Warren, et al.*, 81-30097. On June 18, 1982, the District Court granted Appellees' Motion to Dismiss on the grounds of abstention, ruling that the State Court is competent to resolve questions of federal constitutional law.

In a State Court case involving the same property, the Macomb County Circuit Court declared the premises a public nuisance and ordered the southerly portion of the premises closed under MCL 600.3820 and MCL 600.3825. This decision was upheld by the Michigan Court of Appeals in *State ex rel Macomb County Prosecuting Atty. v Mesk*, 123 Mich App 111, leave denied in 417 Mich 1031 (1983).

ARGUMENT

The appeal herein fails to present a substantial federal question for the reason that Appellants have failed to present facts in the lower court which support their standing to challenge the special use approval requirement of the Warren ordinance. The testimony and exhibits offered by the parties herein clearly demonstrate the undisputed fact that Appellants' property is located within 100 feet of property zoned residential. Under the plain language of Section 14.02C(2) of the Zoning Ordinance, a site plan (if submitted by Appellants) could not be approved. The requirement for site plan submission and approval "before authorization of a land use or activity" is expressly provided by provisions of Michigan Statute. MCL 125.584(d)(2). (App. 8a) Without compliance with the 500 foot setback provision, Appellants would not be required to submit application for special use

approval. Therefore, as argued below, Appellants lack standing to raise the issue of the validity of the special use approval procedure in the Warren ordinance. Appellants may not assert the legal rights or interests of third parties who may be required to seek special use approval, *Warth v Seldin*, 422 US 490, 499, 45 L Ed 2d 343, 95 S Ct 2197 (1975), *Tileston v Ullman*, 318 US 44, 87 L Ed 603, 63 S Ct 493 (1943). As this Court has previously held, the reason for this rule is two-fold. The limitation "frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where their constitutional application might be cloudy," *United States v Raines*, 362 US, at 22, 4 L Ed 2d 524, 80 S Ct 519, and it assures the Court that the issues before it will be concrete and sharply presented. Since Appellants have failed to demonstrate to this Court that a "case" or "controversy" exists as required under Article III of the United States Constitution, it is clear that a substantial federal question has not been presented.

Even if Appellants could present facts that provide standing for raising this issue, an additional question of ripeness is presented by the facts in this case. The U. S. District Court for the Eastern District of Michigan is presently deciding whether the same ordinance provisions are valid and enforceable in *15192 Thirteen Mile Road, Inc., et al. v City of Warren*, D.C. No. 84 CV9798PH. It is clear that the U.S. District Court's decision on the preliminary request for injunction and the opinion cited by Appellants is not a "final adjudication" on the merits. The parties are presently awaiting the findings and decision of the District Court in this case. Appellants attempt to urge this Court to review the State Court decision, while the same issue is awaiting a decision in the U.S. District Court, is an attempt to invoke the jurisdiction of this Court before the issue is ripe for decision.

CONCLUSION

For the foregoing reason that Appellants lack standing to challenge the special use approval, Appellees move that this appeal be dismissed.

Respectfully submitted,
David L. Dalenberg (P12451)
Senior Assistant City Attorney
Attorney for Appellees
29500 Van Dyke Avenue
Warren, Michigan 48093
(313) 574-4671

Dated: October 2, 1985.

APPENDIX

APPENDIX TABLE OF CONTENTS

	Page
Memorandum Opinion and Order dated June 18, 1982, of the United States District Court, Eastern District of Michigan, Southern Division, in *Michigan Diversified Business Corp., et al.* v. *City of Warren, et al.*, Civil No. 81-30097	1a
Opinion of the Michigan Circuit Court for the County of Macomb dated April 10, 1981, in *State Ex Rel, George N. Parris Macomb County Prosecuting Attorney* vs. *H. C. Mesk, et al*, File No. 80-2297-CZ	4a
Michigan Zoning Enabling Act, MCL 125.584(c)	7a
Michigan Zoning Enabling Act, MCL 125.584(d)	8a
Michigan Zoning Enabling Act, MCL 125.587	9a
Warren Zoning Ordinance, as amended, Sections 14.02, 20.07, 22.01, 22.03, 22.09, 22.10, 22.11, 2.68, 2.69, 22.14	10a

Memorandum Opinion and Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN DIVERSIFIED BUSINESS CORP., et al,
Plaintiff,

v

Civil No. 81-30097

CITY OF WARREN, et al,
Defendants.

MEMORANDUM OPINION AND ORDER

At a session of said court held in the Federal Building, Bay City, Michigan on the 18th day of June, 1982

PRESENT: HONORABLE JAMES HARVEY
United States District Judge

Plaintiff, which owns and operates an economic enterprise offering certain types of entertainment, brought this action to challenge the constitutionality of a zoning ordinance of the City of Warren, Michigan, and the actions of various city officials thereunder. Plaintiff seeks a declaratory judgment and injunctive relief. The matter is before the Court on defendants' motion to dismiss.

As defendants point out, and as plaintiff admits in its complaint, the claims raised in this action are also the subject matter of two cases filed in 1978 and currently pending in the Macomb County Circuit Court. *See City of Warren v Michigan Diversified Business Corp et al,* No. 78-2669-CZ and *Michigan Diversified Business Corp et al v City of Warren et al,* No. 78-6275-CZ. For this reason, defendants have requested that the Court "abstain from accepting jurisdiction in this action and dismiss plaintiff's claim."

The present motion is governed by the principles enunciated by the Supreme Court in *Colorado River Water Conservation District v United States*, 424 US 800 (1976) and *Will v Calvert Fire Ins Co*, 437 US 655 (1978), and endorsed by the Sixth Circuit in *Northwood Apartments v LaValley*, 649 F2d 401, 407 (CA 6, 1981). In *Colorado River* the Court created a new theory of "abstention" which recognized that in some cases, it is appropriate for a federal court to abstain from accepting jurisdiction over an action, where to do so would avoid litigation which would be duplicative of an action already commenced in state court. Previous to this decision, the doctrine of abstention was considered appropriate only in the following circumstances: where there exists unsettled questions of state law which, if settled by the state, would avoid the necessity of deciding the matter on a federal constitutional ground, *Railroad Comm'n of Texas v Pullman Co*, 312 US 496 (1941); where accepting jurisdiction would create needless conflict with state policies in areas of basic concern to the states, and federal adjudication in the area would disrupt state efforts to establish its own policy with respect to matters of substantial concern, *Burford v Sun Oil Co*, 319 US 315 (1943); and where accepting jurisdiction would frustrate a pending state court proceeding, in derogation of the principles of comity and federalism. *Younger v Harris*, 401 US 37 (1971).

In *Colorado River* it was held that "consideration of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation," are the principles which govern this new theory of abstention. 424 US at 817. It was recognized that while federal courts have an "unflagging obligation . . . to exercise the jurisdiction given them," there are circumstances which exist which make abstention the more appropriate course of action. *Id.* at 817-818. "The decision in such circumstances is largely committed to the discretion of the district court," *Will v Calvert Fire Ins Co*, 437 US at 664, which must take into account several factors in reaching its decision, but

"the general principle is to avoid duplicative litigation." *Colorado River,* 424 US at 817-818.

In the present case, nearly all factors to be considered counsel against concurrent federal proceedings. The state action was commenced long before the federal suit. *See Donovan v City of Dallas,* 377 US 408 (1964). The essence of both actions involves questions and policies of state law, as well as federal law, which should not be handled by means of piecemeal litigation. *Cf. Brillhart v Excess Ins Co,* 316 US 491 (1942). The state court is certainly competent to resolve questions of federal constitutional law. *See England v Louisiana Medical Examiners,* 375 US 411 (1964). There is an element of practical inconvenience, in terms of distance, associated with the federal forum. *Cf. Gulf Oil Corp v Gilbert,* 330 US 501 (1947). And finally, the plaintiff is seeking purely equitable relief and not monetary damages. *Will v Calvert Fire Ins Co, supra, Brillhart v Excess Ins Co, supra.*

For all these reasons, the Court, in its discretion, hereby GRANTS defendants' motion. Accordingly, this action is hereby DISMISSED.[1]

IT IS SO ORDERED.

(s) JAMES HARVEY
United States District Judge

[1] The Court recognizes that given the doctrines of res judicata and collateral estoppel, the "practical effect" of this Court's grant of defendants' motion is to actually dismiss the action rather than merely stay its hand. *See* 17 Wright & Miller, *Federal Practice and Procedure* § 4247 at 517-519. Therefore, the Court has decided to expressly so frame the present order as a dismissal.

Circuit Court for the County of Macomb Opinion

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

STATE EX REL, GEORGE N. PARRIS
MACOMB COUNTY PROSECUTING ATTORNEY,

Plaintiff,

-vs- File No. 80-2297-CZ

H. C. MESK, believed to be known as
HELEN C. MESK, and SMR CORPORATION
d/b/a GORDON STUDIOS,

Defendants.

OPINION

This matter involves an action by the Macomb County Prosecuting Attorney to abate an alleged public nuisance pursuant to MCL 600.3801 *et seq*. The cited statute declares that any "building — or place" used for the purpose of "lewdness, assignation or prostitution" may be enjoined and abated as provided elsewhere in the statute. MCL 600.3805 allows the prosecuting attorney to commence such actions.

The matter at bar has an extensive history. On May 21, 1980, this Court issued an opinion covering the case to that date and further holding that the harsh remedy of abatement by closure was too severe at that juncture. However, defendants were enjoined from permitting the occurrence of any further activities prohibited under MCL 600.3801 at their facilities. The parties were advised that any violation of this injunction would result in an immediate order of closure.

Commencing December 16, 1980, a trial was held in this matter. At that trial, Deputy Warren Lamb testified that, on July 16, 1980, he went to the premises in question and engaged a model for a massage. Lamb claims that he paid

the woman $30.00 for a "hand job" i.e., digital stimulation of his penis by the model. Upon the model's acceptance of the money, Lamb identified himself and arrested the woman. The woman denies these allegations. The Court finds the officer's testimony to be the truth of the matter.

On November 11, 1980, a similar scenario occurred involving Deputy Al Sawaya. The price offered was $50.00.

Again, on November 28, 1980, police officer E.J. Smith was offered a "hand job" and a "blow job" (fellatio) by a female model. The price offered was $75.00.

It seems apparent that the order of the Court, dated May 21, 1980 meant little or nothing to the defendants therefore.

Defendants contend that they have attempted to rid the premises of "models" engaging in acts of prostitution. The evidence speaks otherwise. It should also be noted that there is adequate testimony to support the court's decision herein without ruling on the search and seizure questions.

Defendants contend at page 3 of their post-trial brief that they were unaware of continuing acts of prostitution. Yet, at page 4, they concede actual knowledge of such events in the past. The overall logic of their argument regarding lack of actual knowledge is therefore less than convincing to say the least.

Defendants contend that numerous hotels, businesses, and parks would have to be closed, if only a few acts of prostitution are needed to invoke the padlock act. The argument is an exercise in speculation, since no one knows the quantum of immorality that is exactly required to invoke the act. Such decisions are best left to the discretion of the executive arm of government. The function of the judiciary is to determine whether the act was properly invoked. Given the recurrent pattern of acts shown herein, the Court finds that the Prosecuting Attorney has not abused his discretion in this case.

Whether or not the defendants actually knew of these acts is irrelevant inasmuch as MCL 600.3815(2) obviates any necessity to show proof of actual knowledge on the part of the landowner.

Insofar as the question of proof of the reputation of the facility is concerned, it is plain that MCL 600.3815(1) connotes a permissive use of general reputation as an element of proof. The same is clearly not an indispensible element of a padlock action.

It is clear that, despite the earlier order of this Court, acts of prostitution have continued unabated at the subject premises. The only solution is to abate the nuisance itself.

An order of abatement consistent with the provisions of MCL 600.3801 *et seq* will enter upon notice and presentment.

Dated: April 10, 1981

(s) KENNETH N. SANBORN
Circuit Judge

cc: Thomas Landy
Noel L. Lippman
William W. Swor

MCL 125.584(c)

Specifications of requirements and standards of decision specified in ordinances; extent of standards, request, compliance, approval.] SEC. 4c. (1) If a city or village zoning ordinance authorizes the consideration and approval of special land uses or planned unit developments pursuant to sections 4a or 4b, or otherwise provides for discretionary decisions, the requirements and standards upon which the decisions are made shall be specified in the ordinance. The standards shall be consistent with, and promote the intent and purpose of the zoning ordinance, and insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall insure that the land use or activity is consistent with the public health, safety, and welfare of the city or village. A request for approval of a land use or activity which is in compliance with the standards stated in the zoning ordinance and the conditions imposed thereunder, other applicable ordinances, and state and federal statutes shall be approved.

Approval of special land use, planned unit development or other land uses or activities, reasonable conditions, requirements.] (2) Reasonable conditions may be required in conjunction with the approval of a special land use, planned unit development or other land uses or activities permitted by discretionary decision. The conditions may include, conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall do all the following:

(a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-

being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the ordinance for the land use or activity under consideration; and be necessary to insure compliance with those standards.

Conditions, recording.] (3) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of changes granted in conditions.

MCL 125.584(d)

Site plan, inclusions.] SEC. 4d. (1) As used in this section, "site plan" includes the documents and drawings specified in the zoning ordinance necessary to insure that a proposed land use or activity is in compliance with the local ordinance and state and federal statutes.

Submission and approval, specifications of zoning ordinances.] (2) A city or village may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body, board, or official charged with reviewing site plans and granting approval.

Record of approval.] (3) If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the

approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the landowner and the administrative official or body which initially approved the site plan.

Procedure and requirements, specifications.] (4) The procedures and requirements for the submission and approval of site plans shall be specified in the zoning ordinance. Site plan submission, review, and approval shall be required for special land uses and planned unit developments. Decisions rejecting, approving, or conditionally approving a site plan shall be based upon standards and requirements contained in the zoning ordinance.

Approval, conditions.] (5) A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the zoning ordinance and the conditions imposed thereunder, other applicable ordinances and state and federal statutes.

MCL 125.587

SEC. 7. Buildings erected, altered, razed or converted, or uses carried on in violation of ♦ local ordinances or regulations made ♦ [pursuant to] this act are ♦ declared to be a nuisance per se. The court shall order [the] nuisance abated, and the owner ♦ or agent in charge of [the] building or land, [or both the owner and the agent,] shall be adjudged guilty of maintaining a nuisance per se. The legislative body ♦ in the ordinance enacted ♦ [pursuant to] this act [shall] designate the proper officials whose duty it shall be to [administer and] enforce the ♦ ordinance and provide penalties for the violation ♦ [of the ordinance].

SECTION 14.02 — WARREN ZONING ORDINANCE

Section 14.02. Approval of Special Land Use Permit — Under such conditions as the City Council, after recommendation of the Planning Commission, finds the use meets the standards of approval set forth in Section 22.14 of the Ordinance and subject to the conditions that may be imposed, the following uses may be permitted:

* * *

"C. Adult Businesses — including but not limited to the following: Adult bookstores, adult motion pictures, adult mini motion pictures, nude body painting or modeling studios, and escort services.

1. **Definitions.**

a) **Adult Bookstore.** An establishment having a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Special Anatomical Areas', (as defined below), or an establishment with a segment or section devoted to the sale or display of such material.

b) **Adult Motion Picture Theater.** An enclosed building with a capacity of fifty or more persons used for presenting material having as a dominant theme materials distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Special Sexual Activities' or 'Specified Anatomical', (as defined below), for observation by patrons therein.

c) **Adult Mini Motion Picture Theater.** An enclosed building with a capacity with less than fifty persons used for presenting materials distinguished or characterized by an emphasis on

matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas', (as defined below) for observation by patrons therein.

d) **Nude Body Painting or Modeling Studio.** An establishment which provides the services of body painting of the human body or (as defined below) are offered for observation of the patrons therein."

e) **Escort Service.** An establishment which provides the services of escorting members of the opposite sex for payment of a fee.

f) **Specified Sexual Activities, Specified Anatomical Areas.** For the purpose of this Section 'Specified Sexual Activities' is defined as:

(1) Human genitals in a state of sexual stimulation or arousal.

(2) Acts of human masturbation, sexual intercourse or sodomy.

(3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

And, 'Specified Anatomical Area' is defined as:

(1) Less than completely and opaquely covered;

(a) Human genital, pubic region,
(b) Buttock, and
(c) Female breast below a point immediately above the top of the areola; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

2. **Site Plan Review.**

Application to establish an adult business shall be made in writing to the Planning Commission. Such application shall specify the type of adult use or uses that will be catered to, and shall be accompanied by a detailed site plan.

The Planning Commission, having a duty to determine whether a particular use will have a deleterious effect on the surrounding area, will not approve a site plan application if any of the following conditions are found to exist:

a) The site is located on other than a major thoroughfare, as designated in the Master Thoroughfare Plan.

b) The site is closer than 500 feet to the property line of an area zoned residential or a residential use.

c) The site is located closer than 1000 feet to a site having an adult business designation under this section or closer than 1000 feet to the property line of any church or private or public school.

20.07 STANDARDS.

Whenever in this ordinance the lawful exercise or existence of a use requires the approval of the Board of Appeals, the Board shall be guided by the following standards:

1. Whether there is proper yard space, parking facilities, loading space and storage space to adequately carry on the use contemplated.

2. Whether the location and size of the proposed use, the nature and intensity of the principal use and all accessory uses, the site layout and its relation to

streets giving access to it shall be such that traffic to and from the use or uses, and the assembly of persons in connection herewith, will not be hazardous or inconvenient to the neighborhood nor unduly conflict with the normal traffic of the neighborhood.

3. Whether or not the proposed use will have a detrimental effect on the health, peace, safety and welfare of persons residing in the surrounding neighborhood.

Section 22.01 ENFORCEMENT.

It shall be unlawful to build or use or permit the building or the use of any structure or land or part thereof hereafter created, erected or altered or change or enlarge the use of any building or land or part thereof until a building permit in accordance with the provisions of this Ordinance, properly endorsed as to occupancy in a manner herein provided, shall have been issued by the Building Department.

22.03 DUTIES OF BUILDING DEPARTMENT.

The Building Department shall have the power to grant occupancy permits, to make inspections of buildings or premises necessary to carry out its duties in the enforcement of this Ordinance. It shall be unlawful for the Building Inspector to approve any plans, or to issue any permits for any excavation or construction until he has inspected such plans in detail and found them to conform with this Ordinance. . .

22.09 ZONING INSPECTION FOR BUILDING AND LAND USE.

It shall be the duty of the holder of every permit to notify the Building Department of the time when such buildings will be ready for inspection. Two (2) such inspections shall be requested on all buildings.

The first of these inspections shall be requested when excavation for foundations has been completed, and the second inspection shall be requested when the building is completed.

22.10 CERTIFICATE OF OCCUPANCY.

No land or building hereafter erected or altered shall be occupied, used or changed in use until a Certificate of Occupancy shall have been issued by the Building Department stating that the land or building or proposed use of a building or land complies with all the building and City and County health laws and ordinances and the provisions of this and other applicable ordinances.

22.11 APPLICATION FOR CERTIFICATE OF OCCUPANCY.

Certificates of Occupancy shall be applied for coincident with the application for a building permit and shall be issued within ten (10) days after the erection or alteration of such building or the use of land shall have been completed in conformity with the provisions of these regulations. A record of all such certificates shall be kept on file in the office of the Building Department and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building affected.

No fee shall be charged for any original certificate applied for coincident with the application for a permit; for all other certificates, or for copies of any original certificates, there shall be a charge of one dollar ($1.00) each.

In new construction or construction of new buildings, a Certificate of Occupancy may be issued on satisfactory final inspection. In such cases, a request for final inspection may constitute a request for a Certificate of Occupancy.

Section 2.68. Special land use is a use of land for an activity which, under usual circumstances, would be detrimental to other land uses permitted within the same district but which is permitted because of circumstances unique to the location of the particular use and which use can be permitted conditionally without jeopardy to uses permitted within such district.

Section 2.69 Special Land Use Permit — An authorization by the City Council or Planning Commission specified herein to use a parcel of land and/or structure for a special land use.

Section 22.14 PROCEDURES FOR SPECIAL LAND USE APPROVAL.

A. An application for the approval of a special land use permit shall be made by the landowner and occupant of the land on which the special land use is to be located, to the Commission accompanied by the necessary fees and documents as prescribed by the Commission.

B. Upon receipt of an application for a special land use permit, except for those uses provided in Section 14.02 of this Ordinance, the Planning Commission shall review the application and required site plan for conformity with the required ordinance. The Planning Commission shall hold a public hearing at which time the application shall be considered. The public hearing shall be conducted pursuant to the procedure established in Section 4a, Act 207, Public Acts of Michigan 1921, as amended.

Upon receipt of an application for a special land use permit for any use provided for in Section 14.02 of this Ordinance, the Planning Commission shall hold a public hearing and review the application and required site plan for conformity with required ordinance and forward a recommendation regarding same to the City Council for approval.

Section 14.02 — Warren Zoning Ordinance

1. The Special Use Permit shall only be approved if the following general standards are satisfied:

a) The proposed use be compatible with adjacent uses of land;

b) The proposed use be in compliance with the standards of this Ordinance and the conditions imposed thereunder;

c) The proposed use be compatible with the natural environment;

d) The proposed use be compatible with the capacities of public services and facilities affected by the proposed use; and;

e) The proposed use be consistent with the public health, safety and welfare of the City.

2. The approving authority may deny, approve, or approve with conditions, a request for special land use permit. The approving authority may require reasonable conditions regarding the location, character, and other features of the proposed use as it is deemed necessary to satisfy the general standards provided herein.

3. Any conditions required for approval of a special land use may include conditions necessary to insure that the public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote manner. Conditions imposed shall satisfy the following:

a) Be designed to protect natural resources, the health, safety and welfare and the social and economic well being of those who will use the land

use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the City as a whole.

b) Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.

c) Be necessary to meet the Intent and Purpose of this Ordinance, be related to the standards established in this Ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

4. The conditions imposed with respect to the approval of a land use permit shall be recorded in the record of the approval action, and shall remain unchanged except upon the mutual consent of the approving authority and the landowner and occupant. The approving authority shall maintain a record of conditions which are changed.